

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:09-CR-25-BO-1
NO. 5:12-CV-151-BO

CLEVELAND LAVON WARD,)	
Petitioner,)	
)	
v.)	<u>AMENDED O R D E R</u>
)	
UNITED STATES OF AMERICA,)	
Respondent.)	

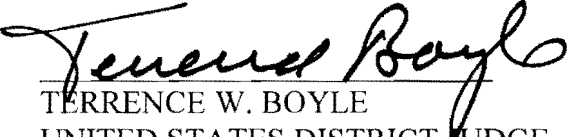
This matter is before the Court on Petitioner’s Corrected Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE 46]. Petitioner, Mr. Ward, asserts that he is not guilty of having been a felon in possession of a firearm in violation of 18 U.S.C. § 922(g) in light of the Fourth Circuit’s holding in *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc).

The government moved to dismiss Mr. Ward’s § 2255 petition, arguing that his claim was barred by the one-year statute of limitations governing such motions, 28 U.S.C. § 2255(f), and that his claim was barred by a waiver in his plea agreement. The government has recently withdrawn its motion, stating that it waives its reliance on the statute-of-limitations defense and asking that the Court reach the merits of Mr. Ward’s claim [DE 54]. Furthermore, the government now concedes that Mr. Ward “has a valid claim that, in light of [*Simmons*], he was erroneously convicted of being a felon-in-possession of a firearm.”

In light of the foregoing and the hearing held in this matter on August 29, 2012, the Court accepts the government’s withdrawal and allows Mr. Ward’s § 2255 motion. Accordingly, Mr. Ward’s Corrected Motion to Vacate is GRANTED. The judgment and conviction entered in this

matter on August 16, 2010, is hereby VACATED and Mr. Ward is ORDERED to be released from federal custody forthwith.

SO ORDERED, this 29 day of August, 2012.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE